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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/259,722 03/01/99 BATTERSBY

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EXAMINER

RICCI, J

ART UNIT

PAPER NUMBER

3712

DATE MAILED:

04/11/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/259,722

Applicant(s)

Battersby et al.

Examiner

John Ricci

Group Art Unit

3712



☐ Responsive to communication(s) filed on _____

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-30 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 20-24 is/are allowed.

☒ Claim(s) 1-5, 7, 10-13, 16-19, 25-29 is/are rejected.

☒ Claim(s) 6, 8, 9, 14, 15, 30 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3712

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 10-13, 17, & 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Floyd et al.

Floyd shows a ball throwing machine having a power head with three wheels, means for individually controlling the speed of each wheel, means for controlling the horizontal position of the power head, and means for controlling the vertical position of the power head. The machine can deliver pitches of different types to different locations at different speeds, with only a few seconds between pitches (column 2, lines 33-50).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 16, 19, & 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Floyd et al in view of Kapp et al.

When a batter faces the pitching machine of Floyd, he can see the wheels and mechanism. This is not a realistic view of an actual pitcher. One would recognize that a pitching machine which includes a view of an actual human pitcher would provide more realistic practice. For example, Kapp shows that a pitching machine may include a screen in front of the mechanism, onto which is projected an image of a human pitcher in motion; the projection of the ball is synchronized with the throwing motion of the pitcher's arm. One would recognize that this screen with image would be useful with the machine of Floyd to provide more realistic practice. It would have been obvious to one of ordinary skill in the art to provide the machine of Floyd with a screen with image, as suggested by Kapp.

Claims 6, 8, 9, 14, 15, & 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 20-24 are allowed.

With regard to claims 20 & 23, the prior art does not disclose a smart card system to program types of pitches.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

* * * * *

This letter was prepared by Examiner John Ricci, who can be reached at the appropriate phone number:

Voice: 703-308-4751

Fax: Use 703-305-3580 for papers that can be delivered directly to the mail room, like formal amendments and responses, change of address, power of attorney, petitions.

Use 703-783-0439 for papers that need to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.

My supervisor is Robert Hafer, 703-308-2674.

PTO main switchboard: 800-786-9199.

Visit our Web site at www.uspto.gov.

John Ricci

**JOHN RICCI
PRIMARY EXAMINER
ART UNIT 3712**